

Minutes

Nevada State Emergency Response Commission (SERC)

Special Meeting

Friday, August 14, 2015 – 10:00am

Video Conference

Carson City

NV Department of Transportation
Training Conference Room
1301 Old Hot Springs Road
Carson City, NV

Las Vegas

NV Department of Transportation
Building B Training Room
123 East Washington Avenue
Las Vegas, NV

Elko

NV Department of Transportation
Main Conference Room
1951 Idaho Street
Elko, NV

Members Present

Richard Brenner, Co-Chair
Susan Crowley
Matt DeBurle
Robert Fash
Matthew Griego
Resty Malicdem
Peter Mulvihill, Co-Chair
Jim Reagan
Eric Santos

Members Absent

Tom Burns
Stacey Giomi
Clinton Hayes
John Helmreich
Karen Luna

Staff

Stephanie Parker
Tami Beauregard
Nathan Hastings

Guests

1. CALL TO ORDER

Peter Mulvihill called the meeting to order at 10:01am

2. INTRODUCTIONS

Members, staff and guests introduced themselves as shown above. A quorum was present.

3. PUBLIC COMMENT

Mr. Mulvihill called for public comment. There was none.

4. APPROVAL OF JULY 09, 2015 MEETING MINUTES

Jim Reagan made a motion to approve the July 09, 2015 SERC meeting minutes. Matthew DeBurle seconded the motion which was approved unanimously.

5. REVIEW APPROVAL BY FUNDING COMMITTEE FOR THE DOUGLAS COUNTY LEPC'S FY2015 HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS (HMEP) MID-CYCLE GRANT APPLICATION SUBMITTED FOR FIRESHOWSWEST (FSW)

Stephanie Parker noted there was a discrepancy in the application with regards to the number of attendees and funding requested. Ms. Parker added the correct amount was submitted by the LEPC but was not on the spreadsheet reviewed by the Funding Committee and the wrong amount was approved.

Susan Crowley made a motion to approve the amended Douglas County LEPCs mid-cycle grant application for \$13,500. Paul Enos seconded the motion which was approved unanimously.

6. REVIEW REQUEST BY THE MINERAL COUNTY LEPC TO ACCEPT THE FY2015 HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS (HMEP) MID-CYCLE GRANT APPLICATION SUBMITTED FOR FIRESHOWSWEST (FSW)

Ms. Parker stated the application was not submitted by the deadline and the SERC policy states that applications will be denied if submitted after the deadline. Ms. Parker added Nathan Hastings is going to offer an update regarding the authority of the SERC to accept the application.

Mr. Hastings asked for clarification on when the application was received and if it was post marked before or after July 21st. Ms. Parker answered that the application was emailed on July 21st.

Mr. Reagan asked if there were any issues with the application. Ms. Parker noted a couple of signatures were missing but they have since been submitted.

Mr. Enos asked if the application had been submitted a day earlier, if it would have been approved. Ms. Parker answered that the application would have been reviewed along with the rest of the applications.

A discussion ensued about exceptions made in the past and why the policy is written as is.

Mr. Mulvihill stated the Policy Committee will be meeting on August 24th to review the policies. Mr. Mulvihill added that although the policy does not allow for exceptions, the regulations do not preclude the SERC from making them and asked Mr. Hastings if the SERC has the authority to use discretion in this situation.

Mr. Hastings stated his legal advice is for the Policy Committee to make recommended changes regarding the policy to the SERC, addressing this type of situation. Mr. Hastings added that Mr. Mulvihill is correct that policy does not carry the same weight in law as statute and regulations; but that there will be a time when the SERC will need to rely on the policies when a situation is not addressed in statute or regulation.

Mr. Hastings added it is difficult to defend a public body when there is litigation challenging a public body regarding a decision made because of policy and not statute or regulation and in the past that public body used discretion and went beyond the language of the policy.

Mr. Hastings clarified that there is no statute or regulation allowing the SERC to use discretion, as well as no statute or regulation precluding the SERC from using discretion. Mr. Hastings stated that the statutes and regulations do not address this issue at all.

Mr. Hastings also advised if in the future, the SERC wants to hold firm to a policy that is being challenged, and if under these circumstances the SERC decides to not follow policy, then the SERC has undermined its ability to rely on policy as firm authority.

Mr. Hastings stated he is not going to advise the SERC on whether it should or should not accept the grant application, but will provide the pros and cons.

Mr. Hastings noted the con has already been discussed and added if the SERC does not follow policy now; any entity will be able to challenge the consistency versus the arbitrariness of the SERC's reliance on policy.

A discussion ensued regarding what action the SERC should take right now, why the application was submitted late and that the SERC recognizes there is a change needed in the policy.

Ms. Crowley asked if making this exception now will follow the SERC in the future even if the policy is changed to allow for exceptions. Mr. Hastings stated the SERC should not legislate retroactively and it is better to change the policy first.

Mr. Enos asked what the worst case scenario would be if the SERC makes this exception. Mr. Enos feels the SERC will be on solid ground especially since the policy will likely be changed. Ms. Crowley agreed with Mr. Enos and made a motion that this is a special circumstance and the risk is very small to approve the application. Mr. Enos seconded the motion.

Mr. Reagan asked for clarification of the motion. Ms. Crowley stated the motion is to approve the Mineral County LEPCs grant application for FireShowsWest. Mr. Enos also added the SERC is recognizing the extenuating circumstances. Ms. Crowley added that contingencies have to be met. Mr. Enos seconded the amended motion.

Mr. Hastings stated by making this exception, and if there is a challenge in the future, the SERC cannot say it follows its policy as written.

Mr. Reagan gave history of why the policies were written as is and that the SERC adjusts policies based on situations.

Mr. Enos asked what it will mean if Mineral County does not send the first responders to the FSW. Mr. Enos stated the first responders will not have the same training as those who attended FSW. Mr. Enos also noted every time he will support giving the first responders the proper training to take care of the citizens in the State of Nevada in their county.

Mr. Reagan noted he agrees with the motion because the SERC is in violation of its own policy and not statute or regulation.

Mr. Hastings stated it is a violation of policy to simply make the motion to approve the grant application.

Matthew Griego noted he understands both sides of the discussion and will rely on the SERC to know the risks, but the risks seem to be minimal.

Mr. Mulvihill called for the vote which was approved unanimously.

7. REVIEW AVAILABLE FUNDING FROM THE SERC TO FURTHER SUPPLEMENT THE LOCAL EMERGENCY PLANNING COMMITTEE (LEPC) APPLICANTS TO ATTEND THE FSW CONFERENCE

Ms. Parker stated the Funding Committee made a recommendation, based on the funds requested in the applications submitted being more than the available previously approved funding, to approve up to \$85,000 of SERC funds for all the applicants to attend the FSW. Ms. Parker added a spreadsheet was provided to the Commission with application request details and available funds. Ms. Parker also noted the applications were approved but the amounts are contingent on this additional funding and other contingencies.

Mr. Mulvihill verified that the SERC has funding authority to cover the additional funding. Ms. Parker answered yes.

Mr. Reagan verified that the additional funding is in addition to the \$40,000 already approved by the SERC. Ms. Parker responded affirmatively.

Mr. Brenner stated in the past there was more HMEP funds available for FSW, and now the LEPCs are using the funds during the year, which is a good thing.

Ms. Crowley stated the SERC funds need to be used.

A discussion ensued regarding why the Funding Committee recommended up to the \$85,000, the reason for the higher room rate and the need to not come back to the SERC for additional funding.

Mr. Enos made a motion to approve \$70,000 in additional funding for FSW Conference & Expo. Ms. Crowley seconded the motion if it can be changed to be, up to \$70,000. Mr. Enos amended his motion to be up to \$70,000. Ms. Crowley seconded the amended motion.

Robert Fash asked for clarification on how much funds are needed to fund all the application requests and a discussion ensued with regards to what the correct number is.

Mr. Enos amended his motion to be up to \$85,000. Ms. Crowley seconded the amended motion which was approved unanimously.

8. PUBLIC COMMENT

Mr. Enos noted he appreciates the policy discussion and that it is important to make sure the first responders have the appropriate training so they can better serve the citizens and to always have the safety of the first responders in the front of our minds.

9. ADJOURNMENT

Mr. Enos made a motion to adjourn the meeting at 10:44am. Mr. DeBurle seconded the motion which was approved unanimously.